

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA

v.

CASE NO. 2:16cr36

GERALD ANDREW DARBY

Defendant.

**MOTION FOR LEAVE TO FILE
ADDITIONAL MOTIONS AFTER MOTION DEADLINE**

The defendant, GERALD ANDREW DARBY, by counsel, moves the Court for leave to file additional motions, if appropriate, after the conclusion of additional discovery in this matter and in support thereof states as follows:

Defendant is before the Court having been indicted for Receipt of Child Pornography in violation of 18 U.S.C. § 2422(a)(2) (Counts 1-5); and Possession of Child Pornography in violation of 18 U.S.C. § 2252(a)(4)(b) (Counts 6-8). Defendant appeared before Judge Robert J. Krask on March 23, 2016 for an arraignment, entered a not guilty plea, requested trial by jury and voiced his desire to be present for any pretrial motions. The trial date is May 24, 2016¹ and the motion cut-off date was April 13, 2016.

On April 13, 2016, counsel filed the Defendant's First Motion to Suppress. The government filed its' Response on April 27, 2016 and the matter is scheduled to be heard on May 10, 2013 before the Honorable Judge Robert G. Doumar. On April 29, 2016, in preparation for the upcoming hearing, counsel discovered several additional cases that addressed the issues of the case. The decisions in

¹The original speedy trial date is approximately December 11, 2009. Trial was scheduled for November 18, 2009, due to the heavy trial load by defense counsel and the Court's availability. The trial date was set without the benefit of any discovery review. However, a quick motion cutoff date was established by the Court, at the time of arraignment.

these cases were issued on April 20, 2016 and April 27, 2016. Counsel conducted additional research which has raised new issues that counsel has addressed in a Second Motion to Suppress, which will be filed subsequent to the filing of this motion.

LAW AND ARGUMENT

The trial court is given broad discretion in deciding whether to grant or deny untimely motions. *See, e.g., United States v. Ricco*, 52 F.3d 58, 62 (4th Cir. 1995); *United States v. Johnson*, 953 F.2d 110, 116 (4th Cir. 1991); *United States v. Chavez*, 902 F.2d 259, 262-263 (4th Cir. 1990); and *United States v. Badwan*, 624 F.2d 1228, 1232 (4th Cir. 1980). Defendant is seeking leave in order to further investigate the necessity of additional motions.

Wherefore, the defendant moves the Court for leave to file additional motions.

Respectfully submitted,

GERALD A. DARBY

By: _____ /s/ _____

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CERTIFICATE OF SERVICE

I certify that on the 3RD day of May, 2016, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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By: _____ /s/ _____
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